IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

KWESI B. AMONOO,

Plaintiff,

v.

LIZZIE TEGELS, TIM THOMAS, and KAREN SPARLING,

Defendants.

OPINION AND ORDER

12-cv-693-wmc

State inmate Kwesi B. Amonoo claims that he was denied the right to assemble with others for Islamic prayer at the New Lisbon Correctional Institution ("NLCI"). Amonoo has been granted leave to proceed *in forma pauperis* and made an initial partial payment. Because Amonoo was incarcerated at the time of the events he alleges, the Prison Litigation Reform Act ("PLRA") also requires the court to screen his proposed complaint to determine whether it: (1) is frivolous or malicious; (2) fails to state a claim on which relief may be granted; or (3) seeks money damages from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b). Because the court finds that Amonoo has stated a claim for relief pursuant to 42 U.S.C. § 1983 with regard to some of his allegations, he will be allowed to proceed with his claims under the First and Fourteenth Amendments.

ALLEGATIONS OF FACT*

At all times pertinent to the complaint, Amonoo was incarcerated at NLCI, where defendant Karen Sparling was employed as the prison chaplain, defendant Lizzie Tegels as

* In addressing any *pro se* litigant's complaint, the court must read the allegations generously, and hold the complaint "to less stringent standards than formal pleadings drafted by lawyers." *Haines v. Kerner*, 404 U.S. 519, 521 (1972). Amonoo alleges, and the court assumes as true for purposes of this screening order, the following facts.

warden, and defendant Tim Thomas as deputy warden. Amonoo has been a Muslim since birth.

Amonoo's claims stem from his inability to attend Jumu'ah, an Islamic Friday prayer. Because it is an "assembly prayer," Jumu'ah must be prayed in congregation.[1] While Amonoo was not permitted to attend Friday Jumu'ah with others, he claims that defendants permit other religious groups to practice in congregation, including "Catholic Mass, Sweat [L]odge ceremony and [P]rotestant worship." (Compl. (dkt. #1) 5.) The denial of the Friday Jumu'ah communal service rendered that particular tenet of Islam impracticable and according to Amonoo, forced him to miss mandatory salaats, which in turn prevented him from receiving 27 times more blessings than for performing other obligatory prayers.

Sometime in April 2012, Amonoo wrote to Prison Chaplain Sparling, complaining about his inability to practice his religious beliefs by attending Jumu'ah during the month of April. On April 19, 2012, Amonoo followed up by writing to Deputy Warden Thomas. Unsatisfied with the responses he received from both Sparling and Thomas, Amonoo then filed an inmate complaint on May 2, 2012. ICE purported to dismiss Amonoo's complaint "based on inaccurate information." Amonoo appealed on May 21, 2012, and on June 8, 2012, the ICE's decision was affirmed.

Amonoo claims that Sparling failed in her role as Chaplain to permit inmates assemble for Jumu'ah, while permitting other religions to conduct congregational prayer. Amonoo's allegations against Thomas are based on his role as "acting program director"

[1] The Jumu'ah prayer ceremony is intended to purify the sins Amonoo and his fellow believers may have committed during the previous week. During the prayer service, an orator delivers a message to the believers who are gathered for prayer. Normally, prayers are led by an Imam, who is the person with the most age or experience amongst those present. Under Islamic law, there are no special training requirements for being an Imam. *Perez v. Frank*, 2007 WL 1101285, at *3 (W.D. Wis. Apr. 11, 2007).

responsible for approving scheduled religious functions and, more specifically, for failing to schedule and approve Jumu'ah. Finally, Amonoo claims that Warden Tegels failed to supervise "the actions of her staff" and Tegels role in "ultimately approv[ing] all functions at NLCI and … ensur[ing] fairness to all prisoners." (*See* Compl. at 5.)

Amonoo seeks punitive damages, asking the court to award him $300,000 from each defendant for "mental anguish, pain and suffering."

OPINION

Amonoo's pleadings implicate six sources of law: the First Amendment's Free Exercise and Establishment Clauses; The Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. § 2000cc-1; the Fourteenth Amendment's Equal Protection and Due Process Clauses; and the Eighth Amendment's Cruel and Unusual Punishment Clause. The court will address each in turn.

1. Eighth Amendment

To state a claim for an Eighth Amendment violation, Amonoo must allege conditions that result in "unquestioned and serious deprivations of basic human needs" or that cause intolerable or shocking prison conditions. *Rhodes v. Chapman*, 452 U.S. 337, 347-48 (1981); *see also Wells v. Franzen*, 777 F.2d 1258, 1264 (7th Cir. 1985). Under that standard, Amonoo has failed to state a claim. Without in any way denigrating the importance of prayer in all its forms, Amonoo's allegation that he was denied *one form of congregational prayer* neither constitutes the deprivation of basic human needs nor render his prison conditions otherwise "intolerable or shocking." *Cf. Caldwell v. Miller*, 790 F.2d 589, 601 n.16 (7th Cir. 1986) (finding that possible free-exercise claim did not rise to the level of an Eighth Amendment

violation even when considered in combination with exercise restrictions, suspension of contact visitation and possible legal-access claim). Amonoo will, therefore, be denied leave to proceed on this claim.

2. Fourteenth Amendment Due Process Clause

The court will also dismiss Amonoo's due process claim, since it is limited *solely* to his invocation of the term "due process," without any further context or explanation. (*See* Compl. (dkt. #1) 5.) Even reading Amonoo's complaint generously, he has failed to allege any facts that support a claim under the Due Process Clause.

As an initial matter, "[w]here another provision of the Constitution provides an explicit textual source of constitutional protection, a court must assess a plaintiff's claims under that explicit provision and not the more generalized notion of substantive due process." *Conn v. Gabbert*, 526 U.S. 286, 293 (1999) (citations omitted). Here, Amonoo's allegation that he has been deprived of the chance to attend Jumu'ah services falls directly under the Free Exercise Clause of the First Amendment.

Moreover, the court finds insufficient allegations in Amonoo's pleading to support any due process claim. In particular, the Seventh Circuit has explicitly stated that there is no Fourteenth Amendment substantive due-process right in an inmate grievance procedure. *See Grieveson v. Anderson*, 538 F.3d 763, 772 (7th Cir. 2008) (citing *Antonelli v. Sheahan*, 81 F.3d 1422, 1430 (7th Cir. 1996)). Amonoo provides no other facts suggesting a denial of due process and has consequently failed to state a claim for relief under the Due Process Clause.

3. First Amendment Establishment Clause and Fourteenth Amendment Equal Protection

Because Amonoo's claims under the Establishment Clause and the Equal Protection Clause turn on the same requirements, the court will consider these two legal claims together. The Establishment Clause prevents the government from promoting any religious doctrine or organization or affiliating itself with one. *County of Allegheny v. American Civil Liberties Union*, 492 U.S. 573, 590-91 (1989). This clause is violated when "the challenged governmental practice either has the purpose or effect of 'endorsing' religion," *id.* at 592, but it also "prohibits the government from favoring one religion over another without a legitimate secular reason." *Kaufman v. McCaughtry*, 419 F.3d 678, 683 (7th Cir. 2005). In contrast, no violation exists when a governmental entity provides opportunities for institutionalized inmates to practice their religion, provided that the entity does so in an even-handed way.

Having alleged that other religious groups are able to practice congregational tenets fully, while Muslims cannot, Amonoo has stated a claim, if barely, under the Establishment Clause. *Cf. Perez v. Frank*, 433 F. Supp. 2d 955, 966 (W.D. Wis. 2006) ("To the extent petitioner contends that the religious traditions of other inmates are being accommodated while Islamic traditions are not, his allegations state a claim under the establishment clause."). Taking all of Amonoo's allegations as true, including his allegation that there is no legitimate secular purpose for discriminating between these practices, *Kaufman*, 419 F.3d at 683, he has stated a claim for relief that passes the admittedly low bar at screening.

Similar to a claim under the Establishment Clause, a plaintiff alleging an equal protection violation must establish that a state actor has treated him differently because of his membership in a particular class and that "the state actor did so purposefully." *DeWalt v. Carter*, 224 F.3d 607, 618 (7th Cir. 2000); *Sherwin Manor Nursing Center, Inc. v. McAuliffe*, 37

F.3d 1216, 1220 (7th Cir. 1994). Discriminatory purpose "implies that the decisionmaker singled out a particular group for disparate treatment and selected his course of action at least in part for the purpose of causing its adverse effects on an identifiable group." *Shango v. Jurich*, 681 F.2d 1091, 1104 (7th Cir. 1982).

Since Amonoo alleges that defendants purposefully discriminated against Muslims, he will be granted leave to proceed under the Equal Protection Clause as well. Here, too, Amonoo alleges that other religious groups were allowed to "fully practice their congregate tenets" (*see* Compl. (dkt. #1) 5), including Catholic Mass, Sweat Lodge ceremonies, and Protestant worship, but that Muslims are prevented from practicing their own congregate tenet. While the pleadings are again silent as to the possible legitimate secular purposes for this difference in treatment, Amonoo affirmatively alleges that the denial was "malicious" and predicated on the fact that he was a Muslim. Given the court's obligation to draw all reasonable inferences in plaintiff's favor at this stage, along with the same low bar at screening, the court infers here that the disparate treatment Amonoo alleges arose from a discriminatory purpose and will allow him to proceed on his Equal Protection claim as well.

At the same time, Amonoo should be aware that absolute equality of treatment between religions is *not* required. *See Cruz v. Beto*, 405 U.S. 319, 322 n.2 (1972) ("We do not suggest, of course, that every religious sect or group within a prison-however few in number-must have identical facilities or personnel."). Amonoo, therefore, faces a much higher burden going forward on both his Equal Protection and Establishment Clause claims. In particular, he will need to prove that defendants actually treated other prisoners of other religions more favorably than Muslims. *See Kaufman*, 419 F.3d at 683 (Establishment Clause); *DeWalt,* 224 F.3d at 618 (Equal Protection Clause). If there is a "legitimate secular reason" for the

difference in treatment, his Establishment Clause claim will fail. *Kaufman*, 419 F.3d at 683. Likewise, if the distinction in treatment of Muslims versus the treatment of other religious groups is non-arbitrary, his Equal Protection Claim will necessarily fail as well. *Reed v. Faulkner*, 842 F.2d 960, 962 (7th Cir. 1988).[2]

4. Free Exercise of Religion

Finally, inmates raising claims alleging that government officials have impeded their ability to practice their religious beliefs now have two separate legal bases to proceed: (1) RLUIPA; and (2) the Free Exercise Clause of the First Amendment. The court considers whether Amonoo has stated a claim under either of these sources of law.

A. RLUIPA

Amonoo alleges that defendants' refusal to permit him to congregate with others for Jumu'ah constituted a substantial burden on his religious exercise in violation of RLUIPA. (Compl. (dkt. #1) 5.) The court need not consider the substance of this claim, however, because Amonoo cannot get the relief he seeks under RLUIPA. A complaint must include a claim for relief. Fed. R. Civ. P. 8(a)(3). As noted above, Amonoo only asks for monetary relief in the form of punitive damages. (Compl. (dkt. #1) 6.) Amonoo cannot recover monetary damages under RLUIPA because that statute permits only claims for injunctive relief. *Grayson v. Schuler*, 666 F.3d 450, 451 (7th Cir. 2012) (damages unavailable under RLUIPA because claims for damages against state actors in their official capacity are barred

[2] "This is not because discrimination between religions is deemed on a constitutional par with those purely 'economic' discriminations that the equal protection clause, in modern interpretations, treats so leniently, but because the religious dimension of the discrimination is governed by the religion clauses of the First Amendment, leaving for the equal protection clause only a claim of arbitrariness unrelated to the character of the activity allegedly discriminated against." *Reed*, 842 F.2d at 962.

by sovereign immunity, while that act does not create a cause of action against state actors in their personal capacity); *Nelson v. Miller*, 570 F.3d 868, 883-89 (7th Cir. 2009). Therefore, Amonoo may not proceed on his claim under RLUIPA.[3]

B. First Amendment Free Exercise Clause

A Free Exercise Clause inquiry asks whether the government has placed a substantial burden on the observation of a central religious belief or practice and, if so, whether a compelling governmental interest justifies the burden. *Hernandez v. Commissioner*, 490 U.S. 680, 699 (1989). To proceed under this clause, therefore, Amonoo must allege that the defendants placed "a substantial burden on the observation of a central religious belief or practice." *Id*. A "substantial burden" is "one that necessarily bears a direct, primary and fundamental responsibility for rendering religious exercise . . . effectively impracticable." *Civil Liberties for Urban Believers v. City of Chicago*, 342 F.3d 752, 761 (7th Cir. 2003). Because Amonoo alleges that he is a Muslim and that it violates a mandatory tenet of his faith to worship under the alleged conditions, the court will infer at this early stage that his religious exercise was substantially burdened. (Compl. (dkt. #1) at 5.)

Of course, this assumes that Amonoo can prove Jumu'ah congregational prayer is a mandatory tenet of his religion and that its denial is on par with loss of Sunday services for Christians or Saturday temple for Jews. Even if Amonoo can meet that proof, actions by prison officials that substantially burden religious observation do not violate the Constitution if they are reasonably related to a legitimate penological interest. *O'Lone v. Estate of Shabazz*,

[3] Because Amonoo *has* stated a claim under the First Amendment's Free Exercise Clause as discussed below, *and* because RLUIPA presents a less demanding standard, Amonoo may, if he wishes, amend his complaint to request some form of injunctive relief under RLUIPA. *See Perez*, 433 F. Supp. 2d at 964 ("The protections offered by the free exercise clause of the First amendment are more limited than those extended under RLUIPA.").

482 U.S. 342, 350-52 (1987). Four factors are relevant to that determination: (1) whether there is a "valid, rational connection" between the restriction and a legitimate governmental interest; (2) whether the prisoner retains alternatives for exercising the right; (3) the impact that accommodation of the right will have on prison administration; and (4) whether there are other ways that prison officials can achieve the same goals without encroaching on the right. *Turner v. Safley*, 482 U.S. 78 (1987).

Where there is a dispute as to the reason for a particular action, or where the reason is not apparent in the record, the Seventh Circuit has suggested that it is appropriate to wait for summary judgment to evaluate whether prison officials have adequately demonstrated a rational relationship to a legitimate penological interest. *See, e.g.*, *Ortiz v. Downey*, 561 F.3d 664, 669-70 (7th Cir. 2009) (district court erred in assuming on the basis of the complaint alone that there was a legitimate penological reason for denying inmate a rosary and prayer book); *Lindell v. Frank*, 377 F.3d 655, 657-58 (7th Cir. 2004) (district court erred in presuming a security justification existed in confiscating picture postcards when actual reasons behind their removal were not apparent). As in *Lindell*, the record here does not make clear what defendants' reasons were for denying Amonoo the right to participate in Friday Jumu'ah services.

While it is certainly possible -- even likely -- that defendants may have a justifiable reason under *Turner* for failing to offer Friday Jumu'ah services, "this determination cannot be made without knowing the reasons" for that failure. *Lindell*, 377 F.3d at 658. Accordingly, Amonoo may proceed on his claim under the Free Exercise Clause. Defendants are encouraged to move for early summary judgment, however, if they can demonstrate that their actions were reasonably connected to a legitimate penological interest.

ORDER

IT IS ORDERED that:

1) Plaintiff Kwesi Amonoo is GRANTED leave to proceed on his claims under the Equal Protection Clause, the Establishment Clause and the Free Exercise Clause.

2) Plaintiff is DENIED leave to proceed on any other claims.

3) Pursuant to an informal service agreement between the Wisconsin Department of Justice and this court, copies of plaintiff's complaint and this order are being sent today to the Attorney General for service on the defendants. Under the agreement, the Department of Justice will have forty (40) days from the date of the Notice of Electronic Filing of this order to answer or otherwise plead to plaintiff's complaint if it accepts service for defendants.

4) For the time being, plaintiff must send defendants a copy of every paper or document he files with the court. Once plaintiff has learned what lawyer will be representing defendants, he should serve the lawyer directly rather than defendants. The court will disregard any documents submitted by plaintiff unless plaintiff shows on the court's copy that he has sent a copy to defendants or to defendant's attorney.

5) Plaintiff should keep a copy of all documents for his own files. If plaintiff does not have access to a photocopy machine, he may send out identical handwritten or typed copies of his documents.

Entered this 9th day of June, 2014.

BY THE COURT:

/s/

William M. Conley
District Judge